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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,533	04/14/2004	Karla Klumpp Berger	1059-003	6532
34060	7590	06/06/2005	EXAMINER	
MICHAEL N. HAYNES 1341 HUNTERSFIELD CLOSE KESWICK, VA 22947			NELSON JR, MILTON	
			ART UNIT	PAPER NUMBER
			3636	
DATE MAILED: 06/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,533

Applicant(s)

BERGER, KARLA KLUMPP

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) 13-21 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Restriction

Claims 13-21 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on March 9, 2005.

Applicant's election with traverse of Group II, claims 1-12 (drawn to the subcombination) in the reply filed on March 9, 2005 is acknowledged. The traversal is not found persuasive.

Applicant argues that elected claims 1 is a linking claim that properly links all of the remaining claims of the application, and thus must be examined with any elected claims. Applicant cites MPEP 809. It is noted that Applicant has elected the group containing the alleged linking claim 1, therefore claim 1 would be examined as elected. It is also noted that MPEP 809 states: "Where, upon examination of an application containing claims to distinct inventions, linking claims are found, restriction can nevertheless be required". MPEP 809 also states: "should any linking claim be allowed, the restriction requirement must be withdrawn. Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from

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or includes all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability". In the instant case, the alleged linking claim has not been allowed. MPEP 809.3 states: "There are a number of situations which arise in which an application has claims to two or more properly divisible inventions, so that a requirement to restrict the application to one would be proper, but presented in the same case are one or more claims (generally called "linking" claims) inseparable therefrom and thus linking together the inventions otherwise divisible.

The most common types of linking claims which, if allowed, act to prevent restriction between inventions that can otherwise be shown to be divisible, are

- (A) genus claims linking species claims;
- (B) a claim to the necessary process of making a product linking proper process and product claims;
- (C) a claim to "means " for practicing a process linking proper apparatus and process claims; and
- (D) a claim to the product linking a process of making and a use (process of using)".

Applicant further argues that 35 USC 121 is only applicable if two or more independent and distinct inventions are claimed in one application. MPEP 803 indicates that "under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § 806.04 - § 806.04(i)) or distinct (MPEP §

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806.05 - §806.05(i))". Each invention is capable of supporting separate patents since each includes subject matter that is not included in the other groups. MPEP 806(B) states: that where inventions are related as disclosed but are distinct as claimed, restriction may be proper. Distinction has been described in detail in the previous Office action. MPEP 802.01 states : The law has long been established that dependent inventions (frequently termed related inventions) such as used for illustration above may be properly divided if they are, in fact, "distinct" inventions, even though dependent. Applicant argues that no reasonable showing of a lack of unity of invention between claim 1 and any of the remaining claims of the application has been presented. This argument appears directed to international practice and consideration of national stage applications filed under 35 USC 371. The instant application does not fall into either category. Applicant cites MPEP 803.02, which does not appear relevant since this section is directed to practice regarding Markush-type claims. The claims of the instant application do not fall into this category. Applicant argues against the combination-subcombination requirement and indicates that the lateral head support is not cited in either claim 1 or 14. Claims 14-21 of Group III are directed to the method of assembly and not the combination or subcombination. Claims 1-12 of Group II are directed to the subcombination. Claim 13 of Group I is directed to the combination. This is outlined in the requirement for restriction. The combination-subcombination requirement is between Group I and Group II. Group II requires at least a lateral head support, which is not required by Group I. Applicant further argues against the subcombination having separate utility such as a portable supporting apparatus for an article such as a sign or

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an article of clothing, and that there is no explicit disclosure of such in the application.

Clearly the subcombination is capable of this separate utility. There is no requirement for the application to explicitly state the separate utility. Applicant further argues that no evidence has been presented that such utility would not be shared by both the combination and the subcombination. There is no requirement to provide evidence that the combination could not share this utility, nevertheless, the combination would not be used as a sign or article support since it is directed to a wheelchair. Applicant requests support for the above statement. Clearly, an article such as the subcombination has been used to support signs or clothing. The subcombination is directed to essentially two vertical uprights and a horizontal member attached between the uprights. This represents an assembly not unlike many well-known sign supports (such as seen on roadsides or in stores) or clothing racks (such as seen in stores). Applicant argues that claim 14 does not relate to a process of making. As indicated in the requirement for restriction, Claims 14-21 of Group III are directed to a method of assembly. Line 1 of claim 14 reads: "A method comprising". Steps for assembling are then set forth.

Applicant indicates that the requirement indicates that Inventions I and II are related as process of making and product made. The Examiner does not find this relationship in the Office action. Applicant request support for the statement that Inventions II and III are related as process of making and product made. Inventions II and III are related as article and method of assembly. As indicated above, Group III includes process for assembly steps.

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The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (6866288) in view of any of Brim (5022420) or Gillins (5967601) or Sansing (4948197).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of non-destructive snap engagement and disengagement of the headrest assembly to the wheelchair uprights. Note the headrest assembly (28). Note that the ends of the assembly are removably inserted into the sleeves (26b).

Each of the secondary reference conventionally teaches providing an assembly with means for non-destructive snap engagement and disengagement to the assembly to a pair of uprights. In Brim, note means (34, 35). In Gillins, note means (26). In Sansing, note means (65, 66).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of any of the secondary references by adding the snap means to the ends of the headrest

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assembly. Such enhances selective attachment (claim 1) and detachment (claim 2) of the headrest assembly at various locations on the uprights or on other supports.

Claims 3, 4, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (6866288) in view of any of Brim (5022420) or Gillins (5967601) or Sansing (4948197), as applied to claim 1, above, and further in view of Liu (5586810).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the lateral head support (claim 3); the pair of opposing head supports (claim 4); the headrest assembly comprising a headrest height adjuster (claim 7); and the headrest depth adjuster (claim 12).

Liu conventionally teaches providing a headrest assembly with a lateral head support (212); a pair of opposing head supports (212, 212); a headrest height adjuster (note the unlabeled knobs and the holes which receive the apertured uprights); and a headrest depth adjuster (21, 214, 211, etc). Note Figure 2.

Regarding claim 3, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of the Liu by adding the lateral head support to enhance user comfort in a lateral direction.

Regarding claim 4, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Liu by adding the pair of opposing lateral head supports to enhance user comfort in either lateral direction.

Regarding claim 7, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Liu by adding the knobs to the outside of the sleeves, and providing the apertures in the upright portions of 28. Such enhances selective adjustability of the height of the assembly to fit different users.

Regarding claim 12, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Liu by adding the headrest depth adjuster (and associated headrest support or supports) to enhance selective adjustability of the headrest support or supports inward and outward.

Claims 5, 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (6866288) in view of any of Brim (5022420) or Gillins (5967601) or Sansing (4948197), as applied to claim 1, above, and further in view of Howard (4030781).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the headrest assembly comprising a head pad (claim 5); the headrest assembly comprising a removable head pad (claim 6); and the headrest assembly comprising a removable washable head pad (claim 11).

Howard conventionally teaches providing a headrest assembly as comprising a head pad (12); the headrest assembly comprising a removable head pad (12 is removable by way of 16, 18); and the headrest assembly comprising a removable washable head pad (removable by way of 16, 18, and washable).

Regarding claim 5, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Howard by adding a head pad between the uprights of the headrest assembly. Such conventionally enhances user comfort.

Regarding claim 6, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Howard by adding a removable head pad between the uprights of the headrest assembly. Such conventionally enhances user comfort and provides a means for selectively removing the head pad from the assembly.

Regarding claim 11, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Howard by adding a removable and washable head pad between the uprights of the headrest assembly. Such conventionally enhances user comfort and provides a means for selectively removing the head pad from the assembly. Also provided is a configuration for washing the head pad without damage thereto for enhanced cleanliness.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (6866288) in view of any of Brim (5022420) or Gillins (5967601) or Sansing (4948197), as applied to claim 1, above, and further in view of JP (2001327541).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the headrest assembly comprising a headrest

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width adjuster (claim 8); and a headrest width adjuster located adjacent a head pad (claim 9).

JP (2001327541) conventionally teaches providing a headrest assembly as comprising a headrest width adjuster (311, 312, 321); and a headrest width adjuster located adjacent a head pad (see Figure 3).

Regarding claim 8, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of JP (2001327541) by configuring the headrest assembly upper bar as shown in Figure 3, and adding the headrest width adjuster. Such provides selective adaptability of the assembly to supporting structure of varying widths.

Regarding claim 9, it would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of JP (2001327541) by configuring the headrest assembly upper bar as shown in Figure 3, and adding the headrest width adjuster and head pad (2) located adjacent thereto. Such provides selective adaptability of the assembly to supporting structure of varying widths, while also enhancing user comfort.

Claims 1, 5, 6, 7, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP (6866288) in view of any of Brim (5022420) or Gillins (5967601) or Sansing (4948197).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of non-destructive snap engagement and disengagement

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of the headrest assembly to the wheelchair uprights. Note the headrest assembly of Figure 1, including removable, washable head pad (2), width adjuster (311, 312, 321). Note that the ends of the assembly are removably inserted into the sleeves (42) for height adjustment by way of holes 421 and screw (422). Also note that the head pad is located adjacent to the width adjuster.

Each of the secondary reference conventionally teaches providing an assembly with means for non-destructive snap engagement and disengagement to the assembly to a pair of uprights. In Brim, note means (34, 35). In Gillins, note means (26). In Sansing, note means (65, 66).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of any of the secondary references by adding the snap means to the ends of the headrest assembly. Such enhances selective attachment (claim 1) and detachment (claim 2) of the headrest assembly at various locations on the uprights or on other supports.

Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP (6866288) in view of any of Brim (5022420) or Gillins (5967601) or Sansing (4948197), as applied to claim 1, above, and further in view of Shields (44770630).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the head pad surrounding the headrest width adjuster.

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Shields conventionally teaches providing a headrest assembly with a head pad (45) that surrounds a laterally extending bar that is attached between a pair of uprights. Shields provides the pad with a longitudinally extending opening (47).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of any of the Shields by replacing head pad (21) with a pad configured similar to head pad (45) and surrounding the laterally extending bar (321, 31, 321) with the pad. Such provides a head pad that can be selectively attached and detached from the assembly in an easier manner (by way of the opening 47). This eliminates the need to unscrew the width adjuster to remove the head pad. Note that the opening provides access to the width adjuster when needed.

Response to Amendment/Arguments

Applicant's response has been fully considered. Remaining issues are described in the above sections. Applicant's arguments regarding the prior art are moot in view of the new grounds of rejection. Claim 15 has been withdrawn from further consideration, therefore the rejection under 35 USC 112 is not currently an issue.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A width adjustable mechanism for a seating assembly is shown

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by Koepke (3759572). Rachman (3476404) shows a headrest assembly for a wheelchair.

This Office action has not been made final since it includes a new grounds of rejection (claim 10) that has not been necessitated by Applicant's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 5712726861. The examiner can normally be reached on Monday-Wednesday, and alternate Fridays 5:30-3:00.

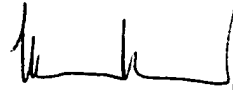
The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Milton Nelson, Jr.", with a stylized, cursive-like script.

Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn

May 31, 2005